153 FERC ¶ 61,261
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

ETP Crude LLC Docket No. OR15-38-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued December 1, 2015)

1. On September 21, 2015, ETP Crude LLC (ETP) filed a Petition for Declaratory Order (Petition) regarding its new crude oil pipeline system (the Project) that will have the capacity to transport approximately 120,000 barrels per day (bpd) from receipt points located in the Delaware Basin in Reeves County, Texas and Lea County, New Mexico to delivery points in Loving County, Texas and Lea County, New Mexico.

2. Specifically, ETP seeks approval of its overall tariff and rate structure, proration procedure, and terms of service for Project so it can be placed into service during the first half of 2016. The Commission grants the rulings requested by ETP, as discussed below.

Background

3. The Project will consist of three separate gathering systems, constituting approximately 130 miles of total pipeline. The Project will enable producers and marketers in the Delaware Basin to deliver crude oil into Sunoco Pipeline L.P.'s Delaware Basin Extension for delivery to both interstate and intrastate markets.

4. ETP conducted a widely publicized open season for the Project from August 5, 2015 to September 4, 2015, seeking term and volume commitments in return for priority service at a premium rate when the Project is subject to prorationing. All interested parties had an opportunity to participate, and notice of the open season was published and reported in a wide variety of industry outlets and general media. Shippers participating in the open season were required to sign a confidentiality agreement and were provided a Transportation Service Agreement (TSA) which included a *pro forma* tariff to be filed with the Commission before the Project enters service. At the conclusion of the open season, ETP determined that it had received sufficient volume commitments to proceed with the Project.

Description of TSA

5. ETP explains that the TSA requires shippers to make binding volume commitments on a ship-or-pay basis for a 10-year term, which can be extended for a subsequent five-year period. At the end of that extended initial term, the term of the TSA will automatically be extended for additional one-year terms until terminated by either party. Committed shippers were offered priority service for volumes up to 90 percent of the Project capacity. At least 10 percent would remain open for uncommitted shippers.

6. The TSA rate design divides committed and uncommitted volume rates into tiers based on the level of a shipper's total volume commitment. ETP explains that committed and uncommitted shippers will pay the same tariff rate during periods in which the Project is not subject to prorationing. The rate applicable to committed and uncommitted shippers will be based on the volume level tendered for transportation on the Project during a particular month. The rates will vary inversely based on the volume tier (i.e., the larger the volume tier, the lower the rate).

7. However, during a month in which the ETP system is subject to prorationing, a committed shipper may elect to pay a priority service rate (i.e., a premium rate) that is one cent per barrel higher than the otherwise applicable tariff rate in order to receive priority service for its priority service volumes.

8. The TSA also provides that ETP may adjust the committed and uncommitted rates commencing July 1, 2017, and each July thereafter in accordance with the Commission's indexing methodology in 18 C.F.R. § 342.3 or any successor methodology (FERC Index Adjustment). However, ETP explains that under the terms of the TSA, no single annual increase to the committed shipper rates pursuant to the FERC Index Adjustment will exceed four and one-half percent. In addition, ETP clarifies the committed shipper rates will not be adjusted downward to be less than the initial rates to be charged to committed shippers in the initial filing of ETP's rates tariff. ETP also states that if the FERC Index Adjustment no longer exists, ETP would make an annual adjustment to the rates applicable to committed shippers using a fixed annual multiplier of three percent.

9. ETP states that committed shippers electing to pay a premium rate will receive priority service during a proration month for up to 90 percent of the Project capacity, and at least 10 percent of available capacity will be reserved for uncommitted volumes.

Public Notice, Interventions, Protests, and Comments

10. Notice of the Petition was issued on September 21, 2015, providing for motions to intervene, comments and protests to be filed on or before October 21, 2015. The Petition is unopposed.

Requested Rulings

11. ETP requests Commission confirmation and approval of the following aspects of the Project:

A. The provisions of the TSA for which ETP is requesting approval herein will govern the transportation services ETP provides to a committed shipper during the term of the TSA.

B. ETP can offer up to 90 percent of the total capacity of the Project to committed shippers and at least 10 percent of the remaining capacity reserved for interstate uncommitted shippers.

C. A committed shipper may receive priority service for its priority service volumes during periods of prorationing in exchange for paying a premium rate as compared to the rate applicable for interstate uncommitted shippers.

D. The rates in a committed shipper's TSA will be treated as settlement rates during the terms of the TSA, including as reflected in the initial filing of ETP's rates tariff, pursuant to section 342.4 (c) of the Commission's regulations.

E. A committed shipper's rates will be subject to an annual adjustment pursuant to the FERC Index Adjustment subject to a four and one-half percent cap. If the FERC Index Adjustment is eliminated, ETP will adjust the committed shipper's rates using a fixed annual multiplier of three percent.

F. The contract extension rights provided to a committed shipper in its TSA are consistent with Commission policy.

G. ETP's proposed prorationing procedure is reasonable, not unduly discriminatory, and consistent with Commission policy.

12. ETP states the Commission has consistently recognized that advance rulings relating to the lawfulness of rate structures and terms of service for proposed crude oil pipeline projects can create regulatory assurances and permit the Commission to consider the issues without being constrained by the statutory decision-making deadline inherent in a tariff filing.[1] ETP explains that its Petition is consistent with established

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[1] ETP Petition at 8 (citing *Express Pipeline Partnership,* 76 FERC ¶ 61,245, at 62,253 (1996)).

Commission precedent and is a non-discriminatory means of meeting the needs of ETP and its shippers on the Project.

13. For example, ETP shows how the proposed priority service terms and rate structures are in accord with Commission precedent. Specifically, ETP states it offered priority service to all interested parties through a widely publicized and non-discriminatory open season, and committed volumes will be subject to premium rates of at least one cent per barrel above the uncommitted rate for the same volume tier if selected when prorationing, consistent with precedent.[2]

14. Moreover, ETP states that the Commission has previously permitted the filing of initial rates as settlement rates under section 342.4 (c),[3] including future index-related adjustments.[4]

15. ETP also states its allocation of capacity between committed and uncommitted shippers is consistent with Commission precedent since at least, 10 percent of the Project's capacity will always be available for uncommitted shippers.[5]

Commission Determination

16. Based on the representations made in the Petition, the Commission finds that all the aspects of the Project for which approval and confirmation are sought are consistent with Commission policy, and the Commission will therefore grant all the declaratory rulings requested by ETP, briefly summarized as follows.

17. The Commission approves ETP's tiered rate structure, offering priority service at a premium rate for the committed volumes of the committed shippers for up to 90 percent of the available capacity of the Project if elected during prorationing. Since the proposed priority service was offered to all interested parties through a widely publicized and non-discriminatory open season, and committed shippers will pay a premium rate for

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[2] ETP Petition at 10 (citing *MarkWest Liberty Ethane Pipeline, L.L.C.*, 145 FERC ¶ 61,287, at P 24 (2013); *CCPS Transportation, LLC,* 121 FERC ¶ 61,253 (2007)).

[3] ETP Petition at 11 (citing *Enbridge Pipelines (FSP) LLC,* 146 FERC ¶ 61,148, at P 31 (2014)).

[4] ETP Petition at 12 (citing *Shell Pipeline Co. LP*, 146 FERC ¶ 61,051, at PP 20-21 (2014)).

[5] ETP Petition at 12 (citing *Navigator BSG Transportation & Storage, LLC,* 152 FERC ¶ 61,026, at P 19 (2015)).

transportation of their committed volumes of at least one cent per barrel above the uncommitted rate, s ETP's requests are consistent with Commission precedent.

18. The Commission also approves ETP's request to file the committed rates as settlement rates. The Commission has ruled that such provisions are consistent with the framework and intent of section 342.4(c) of the Commission's regulations.[6]

19. The Commission further affirms ETP's capacity allocation, which reserves up to 90 percent of the available Project capacity for priority service at a premium rate for the committed volumes of committed shippers during prorationing. The 10 percent available for uncommitted shippers provides reasonable walk-up access to the Project's capacity, and is consistent with Commission precedent.[7]

<u>The Commission orders:</u>

The Commission grants the Petition, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[6] *Seaway Crude Pipeline Co. LLC,* 142 FERC ¶ 61,201, at P 12 (2013).

[7] *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at PP 6-15 (2011); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 at P 17 n.33.